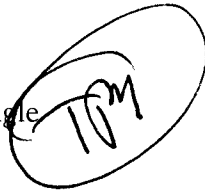


## Memorandum

### VIA E-MAIL

**TO:** Peter Mandelstam, President and CEO  
Bluewater Wind LLC  
  
Robert Propes, Bluewater Wind LLC

**CC:** David S. Swayze  
Christine P. Schiltz

**FROM:** Thomas P. McGonigle 

**DATE:** March 8, 2007

**SUBJECT:** Authority of Public Service Commission - Integrated Resource Plan

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Per your request this morning, I provide the below analysis as to the Public Service Commission's role with respect to the Integrated Resource Plan ("IRP") submitted by Delmarva Power and Light Company ("Delmarva") pursuant to the Electric Utility Retail Customer Act of 2006 (the "Act"). Specifically, you asked me to comment on Order No. 7122 and the PSC's request for comments in paragraph 3 thereof relating to the scope of the PSC's review of the IRP.

A review of the statutory framework evidences a mandatory, rather than permissive, regime -- both with respect to the IRP and RFP processes. Specifically, there are several mandatory requirements that Delmarva must comply with as part of the IRP process. For example, Delmarva "is *required* to conduct Integrated Resource Planning" and "*shall file* with the Commission, the Controller General, the Director of the Office of Management and Budget and the Energy Office" an IRP. 26 Del. C. § 1007(c)(1) (emphasis added). In addition, "Delmarva *shall* systematically evaluate all available supply options" in order to acquire sufficient, efficient and reliable resources to meet its customers' needs. Id. Moreover, as part of the IRP process, "Delmarva *shall not rely* exclusively on any particular resource or purchase procurement process." 26 Del. C. § 1007(c)(1)1(emphasis added). Finally, Delmarva "*must investigate all potential opportunities*" for a more diverse supply. 26 Del. C. § 1007(c)(1)2 (emphasis added). In short,

the intent of the General Assembly is clear - - Delmarva must engage in meaningful integrated resource planning consistent with the provisions of the Act.

To suggest that the PSC and the State Agencies do not have a legislative mandate or role to ensure that Delmarva complies with the provisions of the Act runs counter to this mandatory framework. First, the legislation itself specifically grants the PSC the authority to "promulgate *any rules and regulations it deems necessary to accomplish the development of IRPs by Delmarva*". 26 Del. C. § 1007(c)(1)3 (emphasis added). Such a broad grant of rulemaking authority provides clear legislative intent that the PSC is to ensure that Delmarva carry out and fulfill the requirements of the IRP process. In addition, the PSC otherwise has broad authority to regulate public utilities and it is proper to assume that the General Assembly was aware of this already existing authority when it passed the Act. 25 Del. C. § 201; See State ex rel. Price v .0673 acres of Land, 224 A.2d 598, 602 (Del. 1966) (concluding that the General Assembly is presumed to have enacted legislation with knowledge of the existence and effect of prior law).

Beyond the specific statutory provisions, Delaware case law firmly establishes that when considering the authority granted to an administrative agency, courts must look to the legislative intent or policy and construe statutory provisions with an eye toward granting the agencies the power to meet that intent and/or policy. See State v. Worsham, 638 A. 2d 1104, 1107 (Del. 1994). To this end, the Synopsis of the original House Bill 6, while not conclusive, is indicative of the General Assembly's intent and policy goals. It states in pertinent part:

This Act *comprehensively* amends the Electric Restructuring Act of 1999 by including a number of provisions designed to *stabilize electricity pricing and utilization for Delaware consumers for both the short term and for the long term*.

\* \* \* \*

The Act also *requires integrated resource planning to demonstrate* how the electric distribution company intends to supply the demand for electricity in its service territory for customers not taking service from an alternative electric supplier.

Thus, the policy goals of this Act are far reaching, a *comprehensive* rewrite of the Electric Restructuring Act of 1999 *to stabilize electricity prices* and the IRP process was, in the view of the General Assembly, a critical component to that effort. To that end, with an eye toward the already broad authority and expertise of the PSC, the General Assembly specifically granted the PSC additional broad and far reaching rule making authority to meet this challenge. Moreover, I have found nothing in the legislative record to support the notion that the General Assembly intended Delmarva to have unilateral authority over this IRP process.

In conclusion, it appears from the above-referenced statutory provisions, case law and legislative history, that the PSC has broad authority to review, approve, reject and/or modify the Delmarva IRP submission and should proceed accordingly.

TPM/sc